

APPEAL NO. 021413

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 16, 2002. The hearing officer resolved the disputed issue by concluding that the appellant (carrier) is entitled to a reduction of the respondent's (claimant) impairment income benefits (IIBs) and supplemental income benefits (SIBs) for the compensable injury of _____, by 29% based on contribution from the prior compensable injury of _____. The carrier appealed, arguing that the determination is not supported by legally and factually sufficient evidence. The claimant files a response requesting affirmance of the appealed determination.

DECISION

Affirmed.

Section 408.084(a) provides that, at the request of an insurance carrier, the Texas Workers' Compensation Commission (Commission) may order that IIBs and SIBs may be reduced in a proportion equal to the proportion of a documented impairment that resulted from earlier compensable injuries. In determining the reduction in benefits because of contribution of a prior compensable injury, the Commission is to consider the "cumulative impact from the compensable injuries on the employee's overall impairment" Section 408.084(b). The parties stipulated that the claimant sustained a compensable lumbar injury on (date of first injury); that he received an impairment rating (IR) of 19%; and that on (date of second injury), he sustained a compensable lumbar spine and thoracic spine injury and was certified with a 34% IR for these injuries.

Whether there is a cumulative impact, and, if so, the amount of such cumulative impact, is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 94578, decided June 22, 1994. It is well-settled that "[s]imply proving the occurrence of a previous compensable injury will not sustain the carrier's burden to prove the interaction of that injury with the current one on the present impairment." Texas Workers' Compensation Commission Appeal No. 971348, decided August 28, 1997. The consideration of the cumulative impact from prior injuries requires an assessment not only of the impairment from previous injuries, but also an analysis of how the injuries work together. Texas Workers' Compensation Commission Appeal No. 950268, decided April 10, 1995. This analysis includes considering the IRs from the prior compensable injuries and the present injury, and the components of the IRs. See Texas Workers' Compensation Commission Appeal No. 950735, decided June 22, 1995; Texas Workers' Compensation Commission Appeal No. 951019 decided August 4, 1995.

The carrier had the burden of proof on the appealed issue. The hearing officer did not err in determining that the carrier is entitled to a reduction of the claimant's IIBs

and SIBs for the compensable injury of (date of second injury), by 29% based on contribution from the prior compensable injury of (date of first injury). The amount of contribution must be established by expert medical evidence. Appeal No. 94578, *supra*. Although holding that contribution must be based on expert evidence, we also observe that the "determination of contribution is for the hearing officer who is not bound by the opinion of any doctor, including the designated doctor." Texas Workers' Compensation Commission Appeal No. 94256, decided April 20, 1994. See, also, Texas Workers' Compensation Commission Appeal No. 93889, decided November 17, 1993. Expert medical evidence was presented at the CCH which supports the determination of the hearing officer. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). Having reviewed the record, we are satisfied that the challenged determinations of the hearing officer are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Michael B. McShane
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Philip F. O'Neill
Appeals Judge